THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

W.P.No.22402 of 1998
(per the Hon'ble Sri Justice T.Ch.Surya Rao)

Dated -2006

Between:

The Revenue Divisional Officer, Hyderabad .. Petitioner

and

The Registrar, Special Court under the
A.P. Land Grabbing (Prohibition) Act,
II floor, B.R.K.R. Bhavan, Tank Bund,
Hyderabad, and others ..
Respondents

and

W.P.No.23874 of 1998
(per the Hon'ble Sri Justice T.Ch.Surya Rao)

Dated -2006

Between:

P.Venkateshwara Babu and another .. Petitioners

and

The Government of Andhra Pradesh,
rep. by its Principal Secretary,
Revenue Department Secretariat Buildings,
Hyderabad and others ..
Respondents

THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

W.P.Nos.22402 and 23874 of 1998

COMMON ORDER: (per the Hon'ble Sri Justice T.Ch.Surya Rao)

Writ Petition No.22402 of 1998 has been filed seeking a Writ of *Mandamus* for declaring the order dated 15-07-1998 passed by the Special Court under the A.P. Land Grabbing (Prohibition) Act (for short, 'the Act') in I.A.No.2259 of 1995 in L.G.C.No.28 of 1993, as unjust.

W.P.No.23874 of 1998 has been filed for a Writ of Mandamus, declaring the action of the respondents in proposing to acquire an extent of 1777 square yards of land by issuing necessary notification, dated 01-07-1997, under Section 4 (1) of the Act, as arbitrary, illegal and contrary to the provisions of the Act.

The facts lie in a narrow compass: The land in dispute measuring 1777 square yards, comprises of plot Nos.5, 5A, 6 and 6A, is situate at Bakaram Village, Musheerabad. The petitioners in W.P.No.23874 of 1998 are owners thereof in equal moieties having purchased the same for constructing residential houses. They got a compound wall constructed in the year 1984, all around the said land after having obtained the necessary permission Nos.9/4 and 9/5, dated

08-02-1983, from the Municipal Corporation. Later, some antisocial elements occupied the said land and erected huts thereon illegally. The petitioners, therefore, filed L.G.C.No.28 of 1993 against the land grabbers before the Special Court under the Act. The Special Court eventually passed an order, dated 30-12-1994, declaring the respondents therein as land grabbers and directed them to vacate the said land within a period of two months and in the event of their failure, the Revenue Divisional Officer, Hyderabad, was directed to deliver vacant possession to the petitioners. The writ petitions filed assailing the said order in W.P.Nos.11765 of 1995 and 13856 of 1995 ended in dismissal on 16-10-1995. When moved by the petitioners, in I.A.No.2259 of 1995 the Special Court by means of an order, dated 15-07-1998, directed the Revenue Divisional Officer to present before it on 23-07-1998 to explain the inordinate delay of more than three years in executing its order.

In the meanwhile, the Commissioner, Municipal Corporation of Hyderabad, issued a notification, dated 02-08-1995, under Section 3 (1) of the A.P. Slum Improvement Act, proposing to acquire the said plots. When the petitioners brought to the notice of the Commissioner about the orders passed by the Land Grabbing Court, the Commissioner by his letter, dated 02-04-1996, decided to drop the proceedings and requested the District Collector, Hyderabad, to provide Government land for providing house sites for those land grabbers. Accordingly, the proceedings under the Slum Improvement Act were dropped. However, the District Collector, Hyderabad, issued Section 4 (1) notification under the Land Acquisition Act on 01-07-1997 proposing to acquire the said plots for the purpose of providing house sites to the land grabbers. On the premise that the action of the State in proposing to acquire the land in question as illegal, arbitrary and malafidi, the petitioners filed W.P.No.23874 of 1998.

On the premise that a notification for acquiring the lands under the Act had been issued and when the State was prepared to complete

the acquisition proceedings, as early as possible, the direction of the Special Court to deliver vacant possession on or before 10-08-1998 under the threat of taking action against him is wholly unsustainable, the Revenue Divisional Officer filed the other writ, W.P.No.22402 of 1998 assailing the order of the Special Court in I.A.No.2259 of 1995, dated 15-07-1978. Both the writ petitions, under the circumstances, can be disposed of together.

Sri Subrahmanya Reddy, learned senior counsel appearing for the petitioners in W.P.No.23874 of 1998, represents that the right of the State to acquire the land for the benefit of weaker sections is not being assailed but having regard to the matrix of the case, the action of the State in insisting that the disputed land alone shall be acquired for the benefit of grabbers of the land is malafidi and a colourable exercise of the right under the provisions of the Act.

The learned Government Pleader for Land Acquisition on the other hand represents that no other alternative suitable land is available and that the petitioners cannot question the public purpose for which the land is now being sought to be acquired.

The point that arises for our determination, under the circumstances, is whether the action on the part of the State to acquire the land in dispute is beset with malafidies and is a colourable exercise or not.

Admittedly, the writ petitioners are the owners of the land, measuring 1777 square yards comprises of plot numbers 5, 5A, 6 and 6A, situate at Bakaram village. The petitioners got a compound wall constructed all around the said plots pursuant to the permission Nos.9/4 and 9/5, dated 08-02-1983, granted by the Corporation way back in the year 1984. There can be no gainsaying that they incurred huge expenditure for the said purpose. The persons who were found to be in possession thereof were declared as land grabbers by the Special Court by its order dated, 30-12-1994. The order of the Special Court attained finality when the writ petitions filed assailing the said

order by the respondents in W.P.Nos. 11765 and 13856 of 1995 ended eventually in dismissal on 16-10-1995. The Special Court in I.A.No.2259 of 1995. issued notice to the Revenue Divisional Officer on 03-05-1995 directing him to implement the order passed by it by delivering the property to the petitioners. The matter was entrusted to the Mandal Revenue Officer, who on inspection found that apart from the seven respondents in L.G.C., there were 70 persons in all who raised huts on the land in dispute. While action was proposed to be taken against the Revenue Divisional Officer under Section 166 of the Indian Penal Code for not implementing the order passed by the Special Court, he filed a memo narrating the circumstances and sought for dropping of the proceedings.

While things stood thus, for the first time, the provisions of A.P. Slum Improvement Act proposing to acquire the land were initiated. The Commissioner, Municipal Corporation of Hyderabad, issued Section 3 (1) notification under the said Act. When the petitioners represented the events that transpired earlier thereto, the Commissioner by his proceedings, dated 02-04-1996, decided to drop the proceedings under the Slum Improvement Act and accordingly requested the District Collector to allot Government land for providing house sites for those land grabbers. In the meanwhile, land grabbers and some others, who are all 70 in number, filed review petition in I.A.No.1141 of 1996 to review the order passed in L.G.C.No.28 of 1993. That review petition also ended in dismissal on 26-11-1996. Thereafter, there had been some delay on account of change of benches and retirement of the members of the benches of the Special Court. Section 4 (1) notification was issued under the provisions of Land Acquisition Act on 01-07-1997 for acquiring the land in dispute. From the above matrix and the events narrated herein above, it is obvious that the proposed acquisition under the provisions of the Land Acquisition Act was initiated only when an action was threatened to be taken against the then Revenue Divisional Officer under Section 166

of the Indian Penal Code.

The purpose of acquisition whether or not a public purpose cannot at this stage be questioned having regard to the doctrine of 'Eminent Domain' and the fact that already a notification under Section 4 (1) of the Land Acquisition Act was issued disclosing the *inter alia* public purpose. Presumably, therefore, Sri Subrahmanya Reddy, learned senior counsel, represents at the outset that the petitioners are not disputing the purpose of acquisition and they are assailing the action of the State on the sole premise that it is colourable.

It may be reiterated here that some of the persons for whose benefit the land is now sought to be acquired have been declared as land grabbers by the Special Court. The occupation of the land in question was far subsequent to the construction of the compound wall all around the land in dispute by the petitioners by incurring a sizable expenditure. The suitability of the land for providing house sites cannot be doubted. But, it is not the case of the State that there is no other suitable land than the one proposed to be acquired for providing house sites. The proposal for acquisition has come at the stage when there has been a threat of action qua the Revenue Divisional Officer by the Special Court under Section 166 of the Indian Penal Code. The Commissioner, Municipal Corporation of Hyderabad, in his letter No.C/4332/UCD/LA/MCH/95 dated 02-04-1996, addressed to the Collector, while recommending for dropping of the proceedings under A.P. Slum Improvement Act *inter alia* mentioned thus:

"Pursuant to the said judgment the owners of the land filed I.A.No.2259 of 1995 in Land Grabbing Case No.28/93 and the Land Grabbing Court by order Dated 29-12-1995 issued orders directing the Revenue Divisional Officer, Hyderabad, to deliver vacant possession of the land to the petitioners by 31-01-1996. It is also brought to my notice that the Commissioner/Special Officer in the meeting held with the Collector, Hyderabad, and Managing Director, Andhra Pradesh Urban Development and Housing Corporation on 02-03-1996 has taken a decision to take steps for relocating the slums from the objectionable area and Rajiv Gandhi Nagar is enumerated as one. I am of the opinion that the decision taken at the meeting Dated 02-03-1996 is a sound and pragmatic decision.

In view of the above facts and to avoid further court litigations, it has

been decided to drop the acquisition of private land in Sy.No.121 to 129, 131 and 132 as reported by the Mandal Revenue Officer (Musheerabad). More over there is an order of the Land Grabbing Court in I.A.No.2259 of 1995 in Land Grabbing Case No.28 of 1993 with a direction to the Revenue Divisional Officer, Hyderabad to evict the hut dwellers and hand over the vacant possession. I, therefore, request you, to issue the Patta Certificates of Rajiv Gandhi Nagar Slum dwellers anywhere on the Government land by providing alternate accommodation."

Accordingly, the notification issued under Section 3 (1) of the A.P. Slum Improvement Act was de-notified. These circumstances are innate and emerging clearly from the matrix in the case. Contrary to this recommendation of the Municipal Commissioner, Section 4 (1) notification was issued under the provisions of the Land Acquisition Act. No material has been placed before this Court by the respondent-State that there has been no suitable alternative accommodation anywhere in the city. No plea even has been taken *inter alia* in the counter affidavit filed by the Revenue Divisional Officer that no suitable alternative accommodation is available. When once the Municipal Commissioner, the appropriate authority under the A.P. Slum Improvement Act, after having obtained the legal opinion from the standing counsel recommended for dropping of the proceedings under the said Act, to avoid further Court litigations, without making any effort to find suitable Government land for providing alternative accommodation to the slum dwellers by issuing pattas to them, the proceedings under the Land Acquisition Act should not have been initiated showing it as a public purpose. The authorities cannot plead any ignorance of the proceedings under the A.P.Slum (Improvement) Act since they pertain to the land in dispute and indeed it is not their case.

It is apt in this context to consider the judgment of the Apex Court in *State of Punjab v. Gurdial Singh*[1] , wherein the Apex Court held thus:

"Bad faith, which invalidates the exercise of power, is the attainment of ends beyond the sanctioned purposes of power by simulation or

pretension of gaining a legitimate goal. Court calls it a colourable exercise of power. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment.

Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, mala fides or fraud on power vitiates the acquisition or other official act."

In para 16 the Apex Court held further thus:

"Compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons."

No doubt, having regard to the fact situation obtaining in that case the Apex Court was of the clear view that the element of personal vendetta fueling the politics of compulsory land acquisition could be seen from the facts discernible and it becomes a question of fact whether such a fraud is discernible or not.

In para 9 the Apex Court held thus:

"The question, then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power – sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions – is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal."

It is obvious, that the action taken on the part of the State must show the juristic clarity that the action is not beset with any such bad faith or malice. The authority should have exercised more consideration and restraint before deciding to issue Section 4 (1) notification under the Land Acquisition Act, when the action initiated

earlier under the A.P. Slums Improvement Act was proposed to be dropped so as to avoid further Court litigations and in the best interest of the slum dwellers to find alternative Government land and issue pattas to them in respect of those lands. It is also not discernable from the record about any such action having been taken preceding the decision to issue Section 4 (1) notification. It is obvious that it is a case of total in application of mind by the concerned authorities to the matrix of the case, and events that transpired earlier to the decision taken in this case to acquire the land in dispute on the premise of a public purpose. Without making any semblance of effort in that direction; since it has not been shown before this Court by affidavit or otherwise; the decision to initiate proceedings under the Land Acquisition Act cannot, in our considered view, be free from the allegation of bad faith. The above circumstance coupled with the background history of the case would in our considered view lead to an inescapable conclusion that the action on the part of the Government in having decided to acquire the land in dispute; in utter ignorance of the proceedings initiated earlier under the A.P. Slums improvement Act and the letter addressed by the commissioner to the Collector; under the provisions of the A.P. Land Acquisition Act is nothing short of a colourable exercise of power.

Learned senior counsel for the petitioners, seeks to place reliance upon an unreported judgment of this Court in W.A.No.381 of 1978 in *B.Venkatapathi Raju v. Govt. of A.P.* and a judgment of the single judge of this Court in *Ch.Suryanarayana Murthy vs. Govt. of A.P.*[2] That was a decision rendered by a learned single judge of this Court under the A.P. Slum Improvement (Acquisition of Land) Act, 1956. It was held by this Court in para 1 thus:

"The judgment had become final and effect has got to be given to the judgment and it is executable being a lawful decree granted by a competent Tribunal constituted under the A.P. Land Grabbing (Prohibition) Act, 1982. It is incomprehensible to countenance the argument that despite the said order of eviction, which has been passed against the slum dwellers for whose

benefit the impugned notifications have been issued, the encroachment should be regularized under the guise of the impugned notifications issued under the Act. This action of the respondents to supersede the judicial decision by an executive action thereby scuttling the very judicial decision, is impermissible. No law, impliedly or expressly, authorise the respondent to take such a course."

In this connection the learned senior counsel places reliance upon the judgment of the Apex Court in *Shri P.C. Mills v. Broach Municipality* [3]. In para 4 the Apex Court held thus:

"The most important condition, of course, is that the legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the legislature does not possess or exercise. A Court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a Court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law. Sometimes the legislature gives its own meaning and interpretation of the law under which the tax was collected and by legislative fiat makes the new meaning binding upon Courts. The legislature may follow any one method or all of them and while it does so it may neutralize the effect of the earlier decision of the Court which becomes ineffective after the change of the law. Whichever method is adopted it must be within the competence of the legislature and legal and adequate to attain the object of validation."

We are afraid that it is quite out of context. It is not a case where so as to nullify the law declared by the Court a suitable legislation has been brought in. The point involved in the instant case is whether the action on the part of the State to acquire the land on the principle of eminent domain was a colourable exercise of power or not.

The learned Government Pleader on the other hand represents that no alternative suitable land is available for acquisition, in fact,

even otherwise that cannot be a ground for assailing the notification. In support of the said contention he seeks to place reliance upon a judgment of the Madras High Court in *R.Savithri Devi v. State of Tamil Nadu (Mad.)*[4]. In paras 8 and 9 a learned single judge of the Madras High Court held thus:

> "8. As rightly contended by the learned Government Advocate, merely because the impugned land is more valuable, it cannot be a ground to interfere with the impugned acquisition proceedings as the suitability of the impugned lands for providing house-sites to the Adi-Dravidars of Chitravuthampalayam Village, Dharapuram Taluk, Periyar District, cannot be gone into by this Court under Article 226 of the Constitution of India, as the respondents are the competent authorities to decide the said fact.
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> 9. Similarly, the availability of alternative sites also cannot be a ground to interfere with the impugned acquisition proceedings, as the directions issued by the Government not to acquire the cultivable lands, are not mandatory, in view of the decision of this Court in *C.Pannusamy v. Government of Tamil Nadu*[5]."

The fact situation obtaining in that case is entirely different from the one on hand. It may be reiterated here that neither the purpose nor the right or authority to acquire the land is being questioned here. Therefore, that judgment has no application to the facts in the instant case. Similarly, the convenience or whether more suitable alternative accommodation is available or not are not germane to the decision of the authorities. As discussed hereinabove, having regard to various circumstances emanating from the record, the action on the part of the State is colourable. Therefore, for the reasons hereinabove discussed, the Section 4 (1) notification shall have to be quashed.

However, it may not come in the way of the State to issue a fresh notification under Section 4 (1) of the Land Acquisition Act, provided if it is found on proper verification and application of mind that no other suitable alternative accommodation which belongs to the State is available.

It is open to the petitioner in the other writ to file the necessary explanation which may or may not merit consideration by the learned

Special Court. Without doing the same, he cannot be encouraged to approach this Court seeking to quash the said notification. On that ground alone the writ petition must fail.

For the above reasons, W.P. No.22402 of 1998 is dismissed. W.P. No.23874 of 1998 is allowed and the Section 4 (1) notification issued by the respondent-State is hereby quashed. No order as to costs.

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T.CH.SURYA RAO, J.

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G.CHANDRAIAH, J.

August, 2006.

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[1] (1980) 9 SCC 471

[2] 1993 (1) APLJ 253 (HC)

[3] AIR 1970 SC 192

[4] 2001 (2) An.W.R. 72 (Mad.)

[5] (1997) 1 CTC 212